

IN THE MATTER OF FACTFINDING BETWEEN

CITY OF CLINTON
PUBLIC EMPLOYER

FACTFINDER'S
RECOMMENDATIONS

and

CLINTON POLICE DEPARTMENT
BARGAINING UNIT
EMPLOYEE ORGANIZATION

TERRY D. LOESCHEN,
FACTFINDER

APPEARANCES

For the Employee Organization

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David Pillars, Attorney
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Tony Stone, unit member
Phylis Dalldorf, unit member
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For the Public Employer

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Matthew Brisch, City Attorney
Brian Guy, Police Chief
Gary W. Boden, City Administrator

JURISDICTION

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Chapter 20 of the Code of Iowa, as amended. (hereafter Act) The City of Clinton (hereafter City) and the Clinton Police Department Bargaining Unit (hereafter Unit) have been unable to agree on the terms of a collective bargaining agreement for the 2008-09 fiscal year through negotiations and mediation. They have an independent impasse agreement whereby they have mutually agreed to waive the March 15 deadline for the completion of statutory impasse procedures. The Factfinder was selected from a list of Factfinders furnished to the parties by the Public Employment Relations Board.

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The undersigned Factfinder is required to "make written findings of fact and recommendations for the resolution of the dispute" in accordance with Section 21 of the Act.

A hearing was held on February 28, 2008 at the City Hall in Clinton, Iowa. The hearing commenced at 10:00 a.m. and concluded at approximately 1:30 p.m. At the hearing the parties were provided full opportunity to present evidence and argument in support of their respective positions on each item at impasse. The hearing was tape recorded in accordance with the rules of the Public Employment Relations Board. Upon conclusion of the presentation of evidence and arguments, the record was closed and the various impasse items were deemed to be under submission. Solely upon the evidence in the record and the arguments of the parties the recommendations contained herein are made. The authority of the Factfinder is based upon the requirements of the Act and relevant rules of the Public Employment Relations Board.

CRITERIA

The Act does not set forth any explicit criteria by which the Factfinder is to determine the reasonableness of the parties' proposals when formulating factfinding recommendations. The Act does, however, contain the criteria to be used by interest arbitrators in the formulation of interest arbitration awards when parties must resolve contract disputes by impasse arbitration. It has been generally recognized since the enactment of Chapter 20 of the Iowa Code that Factfinders formulate recommendations based upon the statutory criteria for arbitration awards contained in Section 22.9 of the Act. That Section provides as follows:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hour and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the

conduct of its operations.

Moreover Section 17.6 of the Act provides:

No collective bargaining agreement or arbitrators' decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the Public employer.

The recommendations contained in this decision are made with due regard for the above statutory criteria. The Factfinder has reviewed all of the evidence and exhibits presented by the parties in great detail. However, because the City did not claim any inability to fund any of the proposals of either party and no evidence was presented to that effect, ability to pay was not a factor in any of the recommendations made below.

BACKGROUND

The City of Clinton is located at the eastern border of Iowa adjacent to the Mississippi River. The city covers a geographical area of approximately 35 square miles, and has a population of approximately 28,000 persons. (City Exhibit 13 states a population of 27,772.)

The Clinton Police Department Bargaining Unit consists of 42 sworn officers and 8 non-sworn individuals, which include two public service officers, an animal control officer, receptionist, office secretary, two investigative specialists and a clerk. The Unit and the City have had a collective bargaining relationship for many years. The parties are currently operating under and governed by a collective bargaining agreement due to expire by its terms on June 30, 2008.

The City and the Unit have resolved all outstanding issues for a 2008-09 collective bargaining agreement with the exception of wages, adjustments in the pay matrix (rank and longevity compensation) premium pay (shift commander, supervisor CID), clothing allowance, sick leave (family illness usage) physicals (contact lens examinations) educational expense reimbursement, insurance (life insurance purchase by retirees) and a letter of agreement on office policy (time off for office staff). The failure

to resolve the foregoing impasse items generated the present factfinding proceeding. Those nine impasse items were submitted to the Factfinder for an individual recommendation on each item.

ITEMS AT IMPASSE

1. Wages

The Unit proposes an increase in all unit wage rates of 3.75% effective July 1, 2008.

The City has proposed a 3.25% increase in all wages coupled with the elimination of entry level and 6-month level steps (3rd and 2nd class) on the pay matrix.

2. Adjustment of the pay matrix

The Unit proposes changes in the pay matrix consisting of an increase in rank and longevity steps between 3rd class (entry level), 2nd class (6-monthly level) and 1st class (2nd year) to 4.75%, to be accomplished by increasing the matrix by 1.5% in accordance with a court decision rendered in the Iowa District Court for Clinton County, Case No. 33501.

The City has proposed no change in the current 2006-07 contract matrix for 2008-09, but does propose the elimination of the first two steps as stated above.

3. Premium pay increase

The Unit proposes to increase premium pay for shift supervisors, field supervisors and criminal investigation (CID) by 1%.

The City proposes no change in premium pay and that current contract language be retained.

4. Clothing allowance

The Unit has proposed a change in clothing allowance to provide the \$550.00 annual clothing allowance to all members of the Unit. Thus the clothing allowance would be paid to secretaries, receptionist, CID specialist and records clerk.

The City proposes no changes in the current contract which limits the clothing allowance payment to each police officer, public service officer and the animal control officer, and that current contract language be retained.

5. Sick Leave Adjustment

The Unit has proposed a change in sick leave language to allow unit members to use 5 days of personal accumulated sick leave to care for the illness (and presumably injury) of an immediate family member.

The City did not exchange a written proposal with the Unit for family illness leave. (See City Exhibit 1) However at the factfinding hearing there was a city proposal to allow 24 hours of personal sick leave to be used by a unit member for the care of an immediate family member residing in the member's household. (Page 14 of the Unit's Brief recognizes this proposal.)

6. Physical Examinations

The Unit has proposed that contract language for physical examination be changed from biannual physicals for sworn officers and 3 year physicals for all other unit members to biannual physicals for all members of the Unit. In addition the Unit proposes that the physical examinations include an eye examination for contact lenses every two years at City expense.

The City has proposed no change in physical examinations and that current contract language be retained.

7. Education Expense

The City has proposed a change in contract language regarding education expense reimbursement (effective for new hires 7-1-08 and allowing degree completion for existing employees as of 6-10-2010). In summary, the City proposal restricts Unit member's approved education courses to 60 hours of undergraduate college courses limited to Law Enforcement, Criminology or Criminal Justice. Graduate level courses would not be reimbursed.

The Unit proposes no change in education reimbursement, and that current contract language be retained.

8. Insurance

The Unit proposes that retirees from the bargaining unit be allowed to purchase life insurance at their own expense through the City's insurance plan.

The City claims the Unit proposal is a permissive subject of negotiations and proposes no change in life insurance, and that current contract language be retained.

9. Letter of agreement—office policy

The Unit has proposed that there be a letter of agreement setting out current policy regarding time off for administrations and office staff.

The City claims the Unit proposal is a permissive subject of negotiations and rejects the inclusion of such a letter in the collective bargaining agreement.

COMPARABILITY

At the hearing both sides proffered a comparability group for the purpose of comparison of the unit with other similarly situated public employees. The Unit proposed a comparability group consisting of the following cities: Comanche, DeWitt, Bettendorf, Dubuque, Mason City, Burlington, Waterloo, Muscatine and Marshalltown. The City's proposed comparable cities are: Cedar Falls, Burlington, Mason City, Marshalltown, Muscatine and Ottumwa. Neither group presents the best comparability comparisons. In the Unit group both Waterloo and Dubuque are more than twice the size of Clinton. At the same time, Comanche and DeWitt, while within close proximity, have population bases much smaller than Clinton. The Unit group omitted Cedar Falls, while the City group omitted Bettendorf, both of which are relatively close to Clinton in terms of population. The City also omitted DeWitt and Comanche, which are close in geographic proximity but much smaller in size. The only objection voiced at the hearing was the City's objection to Dubuque comparisons based on its greater population. The Unit did not object to any of the municipalities included in the City's group.

A comparability group is but one of the factors that are required to be considered when formulating a decision. Neither group presents a definitive comparison between the present unit and other similarly situated employees. Little evidence was offered as to actual salary dollar comparisons other than the entry level salary comparisons shown at

pages 4 and 5 of the Unit's brief and hourly wage comparisons reflected in City Exhibit 5. There was, however, evidence as to percentage wage increases in other cities. (City Exhibit 4) Therefore, neither group is adopted as the only appropriate group for comparison. There simply is not enough information provided for the dissimilar cities in each comparability group other than population size to allow the formulation of an appropriate combined group. The propriety or impropriety of the inclusion or exclusion of the large cities of Waterloo or Dubuque, or the small cities of Comanche and DeWitt in a comparability group does not have any appreciable effect upon the appropriateness of the recommendations on the impasse items involved in the present case. As stated above, neither group is adopted by the present Factfinder; rather each will be given appropriate weight.

FINDINGS OF FACT, DISCUSSION, RECOMMENDATIONS

Issue #1. Wages

The Unit proposes a 3.75% wage increase. The City proposes 3.25%. However, the Unit also proposes to increase the pay matrix to effectuate a 4.75% spread between "all rank and longevity" as is further discussed below. In conjunction with the wage proposal the City wishes to delete the first two steps in the matrix. Any wage increase cannot be considered in isolation from the other costs that are incurred with the collective bargaining agreement.

The current collective bargaining agreement between the parties provides for both hourly wages for personnel other than police officers and annual salaries for police officers according to a schedule or matrix which is Exhibit A attached to that agreement. The matrix steps and lanes are intended to reflect both longevity and rank advancement.

The Unit contends that its proposed 3.75% wage increase will enable the City to better attract new hires of sworn officers by making entry level pay more competitive with other communities in close proximity. It should be noted that the City in support of its 3.25% wage proposal contends that its desired elimination of the first two steps in the wage matrix will provide better marketability when advertising to fill an entry level

position. It appears that both sides are willing to recognize a potential problem in the City's ability to attract new sworn officers under the present entry level wage structure.

Clinton's entry level pay for sworn officers is the lowest among the comparable cities shown at pages 4 and 5 of the Unit's brief.

Neither party submitted any comparability data with respect to non sworn positions. There was no evidence that the City has difficulty in filling those positions in the event of a vacancy. A 3.75% raise in salary represents a very reasonable increase for non sworn unit personnel. For example, a CID specialist would increase 59¢ per hour. The lowest paid classification of receptionist would increase 53¢ per hour. A proposed increase of 3.75% should permit the City to be competitive in filling a vacancy in a non sworn position, as well as that of a sworn officer.

The Unit contends that its wage proposal is fair and reasonable due to increase in the cost of living. It points out that, based on United States Department of Labor Statistics, the midwest cost of living increased 4.78% from January 1, 2007 to January 1, 2008. (Unit Exhibit 7A) Moreover, it contends that from January 1, 2004 to January 1, 2008 the cost of living (Midwest index) increased 12.3%. (Unit Exhibit 7B) It also relies on the "All Consumers Index" (Midwest Urban-City population less than 50,000) showing a cost of living increase for the latter time period of 4.8%. (Unit Exhibit 7C)

As a part of its wage proposal the Unit also contends that the percentage spread on the pay matrix between 3rd to 2nd class and 2nd to 1st class be increased to 4.75%. It calculates the resultant total cost percentage increase to be 4.57%. It claims this total percentage is justified both by cost of living increases and necessary matrix adjustments discussed below.

The City claims that a 3.25% wage increase is more reasonable than 3.75%. It argues that 3.75% is too high, and with a matrix change the total percentage cost is obviously too high. It wishes to eliminate the first two steps on the salary schedule to create a more competitive entry pay level. The Chief of Police testified that this change will make the City more marketable in its advertising for new officers. The City asserts that its pay schedule is low on the front end (entry level) but high on the back end when the longevity factor comes into play. The City contends that cost of living increases argued by the Unit are not a viable reason to accept the Unit's wage proposal. The City

asserts that the consumer price index has held steady since July, and may even be declining.

The City candidly admits that it has proposed a 3.25% wage increase to remain consistent with the percentage increases of other bargaining units in the City. The AFSCME unit and Fire unit are both entering the third year of a three year contract with the AFSCME unit increase fixed at 3% and the Fire unit at 3.25%. The other City unit, described in City Exhibit 3 as "non union" has negotiated a 3.25% wage increase for fiscal year 2008-09. The City contends that internal consistency avoids dissatisfaction and jealousy of other Units and promotes work force harmony. The City urges the Factfinder to look to internal comparability as a basis for the wage recommendation. While internal comparability is a factor which factfinders and arbitrators do consider, it is by no means a definitive standard to be given more weight than other recognized criteria. Internal comparability may be less viable when considering a law enforcement unit, particularly with respect to sworn officers. There is a significant dissimilarity of duties when one considers the job responsibilities of a sworn officer as compared to other city positions. It is a reasonable assumption that the sworn police officer has a potential for personal harm every time he stops a motorist and approaches a strange vehicle, has to wrestle a drunk or resolve domestic abuse disputes. It may be validly argued that greater personal risk may justify differences in salary. Nonetheless, the undersigned Factfinder has given due consideration to internal comparability in the wage recommendation.

Without a cost analysis as to the percentage spread changes in the first two steps on the salary matrix proposed by the Unit, the calculated cost difference of the basic wage increases appears to be a difference of \$11,140. (City Exhibit 2 showing a Unit total as \$83,547 and a City total as \$72,407)

The differences between the parties with respect to the percentages in and structure of the pay matrix complicate an analysis of the requested salary percentage increases. Again, the City proposes to eliminate 3rd class and 2nd class steps. The Unit wants to retain those steps and then allocate an additional partial percentage (less than 3.75%) to those two steps to create a uniform 4.75% spread in the matrix. The Unit wage proposal with the steps retained results in a Class 1 salary of \$39,827.00. (Unit Exhibit 6B) The City wage proposal with the steps eliminated results in a Class 1 salary of

\$39,318.00. (City Exhibit 2) If both parties truly accept the need to be more competitive and favorable attract new hires, then it is patently obvious that the Unit Class 1 Salary is better suited to meet that need. However, if the steps are retained, as is the position of the Unit, then the 3rd Class salary becomes the entry level salary at \$36,297.00. This, of course, is \$3021.00 less than the City's proposal entry level at Class 1 without the steps.

The City further argues that the Unit wage proposal is not consistent with the average increases shown in City Exhibit 4. Comparable cities show five year average percentage settlements ranging from 3.06% to 4.3%. The City claims the overall 5 year average of its comparable cities is 3.5%. The Clinton 4 year average is 3.56%. Therefore it contends that its 3.25% impasse position is consistent with a 3.5% average and keeps Clinton in line with those comparable cities.

Individual settlements for the 2008-09 fiscal year are shown as two at 3.25%, one at 3.5%, one at a split 2%+2%, one at 3.75% and one at 4.5%. Thus either the Unit's 3.75% or the City's 3.25% is within the range of the individual percentage settlements shown in City Exhibit 4.

It was argued that additional comparable settlements which should be noted by the Factfinder were Clinton County law enforcement at 4.7% and that the City of Comanche settled a two year agreement at 4.8% and 3.9%. As was previously stated, any wage increase cannot be considered in isolation from other costs that are associated with the collective bargaining agreement. Therefore the cost of the wage increase should be considered along with the cost of the other proposals settled before impasse. (There is no evidence of the cost of any settled items before the Factfinder.) The most significant other cost factor is that associated with the parties positions on the pay matrix. (The Unit seeking a 4.75% even spread and the City seeking to eliminate the steps of Class 3 and Class 2.)

Moreover the Unit vigorously protests that the proposal to eliminate the two positions was not presented at the bargaining table, and first came to the attention of the Unit representative on February 25, 2008, two days before the Factfinding hearing. Regardless of that protest the present Factfinder finds that the situation is akin to the requirements of PERB rule 6.3 (2) which states in part: "Arbitrators and fact finders shall rule on all issues submitted to them including the issue which is the subject of the

negotiability dispute unless explicitly stayed by the board.” Therefore I must consider the impact of the deletion of the two steps on the matrix.

After careful consideration of all of the evidence presented and repetitive review of the hearing tapes and written exhibits, I conclude that the Unit’s proposed percentage wage increase of 3.75% is the most reasonable. It is within the range of the comparability presented. There is no indication that there is any inability to pay that amount on the part of the City. Moreover, it will assist in providing a more competitive entry level salary, something that both parties have indicated is a desirable result.

Therefore I recommend a wage increase of 3.75% for all positions within the bargaining unit. However, I do not recommend that this percentage increase be applied so as to generate a uniform or standardized spread of 4.75% and between all rank and longevity steps on the present matrix. I specifically decline to increase the percentage spread within the matrix for the reasons stated below.

Further, while I recognize the City’s desire to maintain uniform percentage increases among the City’s four bargaining units and theoretically avoid dissatisfaction, jealousy and disharmony among those units. The fact remains that significantly different job duties justify differences in salary. In the present case a .25% differential is not inappropriate. Once again, however, adjustments to the percentage spread in the pay matrix may create a significant percentage difference among the internal units. In this regard internal comparability is worthy of consideration. The Unit’s Exhibit 6B clearly shows that with the matrix adjustment it proposed, the total percentage jumps to 4.5%. This is significantly greater than the percentage increases shown for the other City units, although it may be that other economic benefits in those units also yield a greater total package percentages. However, no evidence of that nature was presented by either party.

It is recommended that wages for each position in the bargaining unit be increased by 3.75% without adjustment to the percentage spread contained in the pay matrix.

Issue #2. Adjustment of the pay matrix

Changes in the pay matrix are the most contentious item at impasse.

As has been stated above, The Unit wants to increase the first two steps of the pay matrix by the percent required to generate uniform 4.75% increments between rank and longevity steps. The City vigorously opposes this proposition.

The City proposes to delete the first two steps of the matrix, eliminating Class 3 and Class 2 classifications. The Unit is equally opposed to this proposition.

The Unit contends that prior to the negotiations in 2002, the pay matrix spread between all rank and longevity was 4%. This was printed on the top of the matrix. In 2002 a four year contract was negotiated and there was an agreement to increase the steps by .5%. The Unit assumed all steps on the matrix would be increased to 4.5%. A pay matrix was prepared and a four year bargaining agreement was signed. The Unit assumed the percentage spread was 4.5% between all steps on the matrix.

After four years the parties entered into negotiations for a 2006-07 agreement. Those negotiations reached impasse and the parties proceeded to both fact finding and impasse arbitration. The arbitration result was a .25% increase on the steps in the matrix. Sometime thereafter it became apparent that the 2002 negotiated .5% increase had never been added between the 3rd class and the 2nd class steps. The Unit then filed a grievance to correct this omission for contracts for the years 2002 through 2007. Arbitrator Anthony Stone refused to exercise any authority with respect to the 2002-06 contracts and limited his award to the 2006-07 agreement. The Arbitrator sustained the Grievance and required all steps in the 2006-07 matrix be increased .25%. With respect to the prior 2002-06 contracts, the Unit filed suit in the Iowa District Court seeking judicial reformation based on a claim of mutual mistake. On December 12, 2007 the Iowa District Court Judge ruled that a mutual mistake occurred and the contracts should be reformed to show a 4.5% increment between each rank and longevity step. That decision is now the subject of a pending appeal to the Supreme Court of Iowa. What the Unit proposes now is adding a sufficient percentage amount to the first two steps in the matrix to generate uniform 4.75% increments between all rank and longevity steps.

The City vehemently protests the Unit's version of the prior events which culminated in both the Arbitration and court action. The Unit maintains that prior to the 2002-2006 contract there was always a 4% spread between all steps on the matrix. The City denies there was always a 4% increment between all steps. It does not concede that

uniform percentage spread ever existed. The City protests that the present Factfinder has no authority to resolve matters which are now pending before the Iowa Supreme Court. The City denies that the wage matrix uniformly went from 4% to 4.5% for each step in 2002. Thus it also protests any alleged increase to 4.75% in 2006 for all steps. The City objected to the evidence presented by the Unit as beyond the scope of authority of the Factfinder. The City argues that the present matrix must remain unchanged until the court processes have concluded.

The present Factfinder concludes that the evidence objected to by the City was properly presented and received as a showing of the bargaining history of the parties. The present Factfinder has no intention of asserting authority contrary to the Iowa Courts. However, the Factfinder has been selected to make recommendations for a 2008-09 bargaining agreement. That agreement has nothing to do with prior agreements now the subject of the court proceedings. I conclude that I have full authority to recommend the terms of a 2008-09 contract. Regardless of that conclusion being correct, a basic problem still remains. In order to recommend a percentage change in the current matrix, one must still ask "a percent of what?" The Iowa Supreme Court could reverse or remand for further proceedings in the lower court. A resulting change in the percentage of a prior agreement may cause a percentage change in a later one. Regardless of this uncertainty, the Factfinder is legally obligated to make a recommendation for a 2008-09 bargaining agreement alone without regard to the court processes described above. Given that obligation, the recommendation is no change in percentage amounts existing between rank or longevity steps in the current pay matrix.

At the same time the impasse proposal of the City seeking to eliminate the first two steps of the matrix cannot be ignored. There is merit in this proposal because elimination of those steps provides the City with an improved hiring base. With a 3.75% wage increase, the hiring base or starting salary moves to \$39,827.00. This compares more favorably with comparable cities entry pay levels shown at pages 4 and 5 in the Unit's brief and comparable starting salaries reflected in City Exhibit 5. Arguably the parties may be better able to negotiate an acceptable spread of percentages in future years if the Class 3 and 2 steps are no longer an issue. A negotiated result is usually superior to a third party decision. Finally, elimination of these two steps does little harm to the

bargaining unit provided existing employees are assured of proper compensation under the revised schedule. I conclude that the Class 3 and Class 2 steps should be removed from the pay matrix provided the following language is added at the end of paragraph A in Article VIII of the collective bargaining agreement to wit: "Effective July 1, 2008, newly hired sworn officers, or existing sworn officers then paid at the 3rd class or 2nd class wage rate of the pay matrix shall be compensated at the wage rate for combined step 1 and 2, 1st class in the pay matrix."

It is recognized that the above recommended language results in somewhat of a wage increase "windfall" to an existing 3rd or 2nd class officer, but that is simply a cost of implementing the City's proposed deletion of the first two steps in the matrix. It is not fair nor reasonable that existing employees should suffer a wage reduction as a result of the matrix change. However, creation of an individual salary adjustment would correspondingly create a new temporary adjustment step. This would recreate exactly that which the City now proposes to avoid in the elimination of the first two steps.

The improved entry level salary is consistent with the testimony of the Chief of Police when he indicated that a high starting wage would allow the City to be more marketable in its hiring of new sworn offices. It should be again noted that the Unit has expressed its concern over a low entry level wage.

At the same time the matrix will reflect a symmetrical percentage spread consistent with the Arbitration award of Arbitrator Hugh Perry. Negotiations for future years should start from a consistent pay matrix.

It is recommended that 3rd class and 2nd class steps be deleted from the pay matrix and that the following language added at the end of paragraph A in Article VIII of the collective bargaining agreement: "Effective July 1, 2008, newly hired sworn officers or existing sworn officers then paid at the 3rd class or 2nd class wage rate in the pay matrix shall be compensated at the wage rate established for combined Step 1 and 2, 1st class employees in the pay matrix."

Issue #3. Premium pay increase

The Unit proposes a 1% increase in premium pay for officers serving in position of Shift Commander or Field Supervisor. It claims that when there was reorganization in

the Police Department in 2006, captains were moved from shift commander positions to new positions supervising investigations, shifts and administration (one captain retired). Four sergeants were then assigned to vacated Shift Commander positions. Four corporals were assigned duties as Field Supervisors. In a prior Factfinding between the parties, the Unit requested a 4% increase in pay for those individuals serving as Shift Commanders and Field Supervisors be included in a 2007-08 agreement. In March of 2007 a Factfinder recommended a 1% premium pay increase. The present Unit proposal requests an additional 1% premium pay increase. Using a 10 year corporal salary amount as a benchmark, the Unit calculates the total cost of its proposed 1% increase to be \$3841.92.

The Unit also requests a 1% premium pay allowance for CID (Criminal Investigation Division). It bases this request on the assertion that the CID position requires specialized training and education. It argues that the lack of premium pay means there is little if any incentive for an officer to seek a position in the CID unit. It contends that the total cost to the City to fund this premium pay proposal is \$2340.00.

The City objects to the above described increases as simply being unnecessary costs. It argues that the 1% Factfinder recommendation in March of 2007 provided adequate compensation for the duties performed by Shift Commanders and Field Supervisors. It contends that there are no additional duties imposed since last year, yet the Unit is presenting the same argument for more pay as it did before. While the Unit argues that the present situation is different than out of rank pay because employees work the positions on a regular basis, the City continues to respond that there has not been any change in duties since last year which justify another 1% increase in premium pay. Further it contends that working in CID is not akin to out of rank pay because the fact is that the people simply perform the work required by the position. There is not an assignment of additional duties to a lower rank originally performed by a higher one. In the words of the City spokesperson, "The people do the position" (i.e. perform the work required).

In the absence of any evidence that there are new and additional duties imposed on the Shift Commander, Field Supervisor or CID since last year, the present Factfinder is not persuaded that an additional 1% is necessary or reasonable. The Unit presented no

comparability data to demonstrate that its additional 1% premium pay or that premium pay for CID duties is consistent with other like kind municipalities.

Any increase in premium pay is not recommended. The Factfinder recommends current contract remain in effect with respect to premium pay.

Issue #4. Clothing allowance

The current collective bargaining agreement provides for an annual clothing allowance of \$550.00 for each sworn police officer, public service officer and animal control officer. The purpose of the allowance is to provide for the replacement of worn or damaged uniforms. The Unit factfinding proposal seeks an extension of that \$550.00 to all unit members. This would include the receptionist, secretary, records clerk and CID specialists. The City's factfinding position is one of continuing the current contract. The Unit states it wishes to obtain some additional compensation for non-sworn personnel. It believes an extension of the clothing allowance to non-sworn persons will accomplish that objective. The Unit calculates the cost of its proposal to be \$2200.00.

The City opposes this change and argues there are no valid reasons to extend the clothing allowance to office personnel. It argues there is a lack of comparability for doing so.

There are obvious reasons to require sworn officers to wear uniforms. They present an image of authority, safety and security to the public. There is no particular public expectation that officer personnel or a CID specialist will be in uniform. For the most part the sworn officer's uniform is not suitable for off duty wear. Conversely the office personnel and CID specialists can wear the same clothing for personal social occasions that they wear for work. There is no evidence of any bargaining history to show that the clothing allowance was intended as a pure economic benefit. Rather, its obvious purpose was to defray the cost of uniforms which must be worn on the job and are not suitable for other purposes. There is no comparability to support the Unit proposal. The undersigned Factfinder recommends that current contract remain in effect with respect to clothing allowance.

Issue #5. Sick leave adjustment

Under the current labor contract employees may accumulate a maximum of 150 days of sick leave at the rate of 14 days per year. The leave is used for personal illness of the employee. Article XVII of the current collective bargaining agreement provides that one day of vacation may be used by the employee for family illness. The Unit's present factfinding proposal seeks the use of 5 days of sick leave for family illness. The City at one time proposed the use of 24 hours of sick leave for family illness, but withdrew that proposal and its present factfinding position is to maintain the current contract status.

The Unit argues there is a need to take some time off to assist with a family illness. An employee should not be penalized by being denied some sick leave use for family members. This is an important issue given the number of households where both parents work and the increasing cost of child care.

The City argues that sick leave usage for family illness is something that should be negotiated and not forced on it at factfinding. The traditional purpose of sick leave has been to provide for employee absence for personal illness. In the present case there is no quid pro quo which justifies the Unit request. Most important, the City contends that leave for family illness generates overtime compensation. This is a significant cost factor for the City.

The Unit presented no comparability evidence regarding family illness leave. However, City Exhibit 12 discloses that four of its six comparable cities allow some sick leave usage for family illness. It is not unreasonable for an employee to have some sick leave available for an illness of a member of the immediate family in situations where the presence of the employee is necessary for the physical well being of the family member.

The recommendation is that employees be allowed to use up to 3 days of sick leave for serious personal illness or injury of an immediate family member who is a dependent of the employee, living in the employee's household when the presence of the employee is necessary for the physical well being of the family member.

Issue #6. Physical examinations

The Unit proposes that bi-annual physical examinations for sworn officers and three year physical examinations for non-sworn personnel be changed to bi-annual examinations for all unit members. In addition the Unit proposes that the physical

examinations include an examination for contact lenses every two years. The cost of the above described examination would be paid by the City. The Unit argues that good eye sight is a prerequisite for effective law enforcement and suggests long term benefits in terms of health insurance cost and general liability. It also contends this proposal generates minimal cost to the City.

The City opposes the Unit's proposal and seeks to maintain current contract language. The City objects that the proposal is a cost item to the City. The current contract provides an eye examination. There is no comparability for contact lens examinations. No compelling reason exists to justify this change.

No comparability evidence was presented by the Unit in support of its proposal, nor was there any evidence of any compelling need for it to be adopted. The interval between physical examinations is reasonable as between sworn and non-sworn persons. Arguably, the contact lens examination could be related to cosmetic considerations. The Unit did not dispute the City's contention that the current physicals include an eye examination. Many persons in law enforcement wear glasses and function very effectively.

There is no real need to modify the current contract. The factfinding recommendation is to retain current contract language.

Issue #7. Education Expense

The City has proposed a change in contract language involving reimbursement for education expense. (Article XXXIV of the current labor contract) As a result of a prior arbitration decision that contract language was interpreted to allow reimbursement for graduate courses. In recent years the City has had concern about the increasing costs of this contract provision, particularly the high cost of graduate credit hours. The City proposes to limit reimbursement to 60 hours of undergraduate college credit courses in law enforcement, criminology or criminal justice. Cost for the entire unit is capped at \$6500.00 annually. The City includes a "sunset clause" in its proposal which allows existing employees enrolled in either undergraduate or graduate programs until July 1, 2010 to complete those programs without any change in reimbursement. The City argues that it does not have a significant need for graduate degree officers. It asserts that it was

never the intent of the agreement to include graduate courses. City Exhibit 6 shows that graduate level course reimbursement has substantially increased since fiscal year 2004-2005.

The Unit strongly objects to the City proposal and proposes that current contract language be continued. It argues that the City proposals substantially impede or restrict opportunity for further education. It asserts the lack of any quid pro quo justifying acceptance of the City's position. It further argues that in current times more than a four year degree is a desirable educational goal. Moreover the Unit expresses deep concern with what it claims are the uncertain factors in the City's proposal, i.e. the nature of the courses which will be approved, scheduling classes outside of working hours, funding, City control over course selection and an annual cap on total expenditures.

It is clear that the City's primary concern is the elimination of graduate courses from the reimbursement program. None of the comparable cities listed by the City show reimbursement for graduate courses. No comparables were presented by the Unit to show graduate course reimbursement by other cities. Educational program reimbursement should be a contract article which benefits both parties. Employees have the benefit of education costs defrayed by the employer, but the employer has the benefit of a work force educated to the level desired and needed by the employer. In this "trade of benefits" the scale is slightly tipped in favor of the employer in that the employer should not have to pay for the education of a work force to a level above its needs. Otherwise, the education reimbursement is simply a form of salary for those who take advantage of the education opportunity. Little benefit then accrues to the employer.

In the present case the evidence supports the elimination of graduate course reimbursement. The City flatly asserts it does not need graduate degreed officers. There is little to no comparability to support graduate course reimbursement. At the same time the City's proposal presents problems which are best resolved at the negotiations table. Those problems include the nature of courses to be approved, how scheduled in conjunction with working hours, how funded, the necessity of an annual cap on education expenditures, satisfactory course progress, reimbursement from a resigning employee and so on. Unfortunately the present Factfinder does not have sufficient evidence in the

present record to make those kinds of determinations. Those matters are better reserved to the parties.

Based on the foregoing, the undersigned Factfinder recommends that the following language be added to Article XXXIV of the collective bargaining agreement: "Effective July 1, 2008, graduate level courses will not be reimbursed, except existing employees who are already enrolled in a graduate degree program shall have until June 30, 2010 to complete those degrees with course reimbursement for the same as is allowed by this Article," and that Article XXXIV as modified herein be continued for a 2008-09 contract.

Issue #8. Life insurance for retirees

The Unit proposes to allow Unit retirees to purchase life insurance from the City's insurance plan solely at the retiree's cost.

The City objects to this proposal as a non-mandatory subject of bargaining and proposes the current contract language be continued.

Pursuant to PERB rule 6.3(2) the Factfinder is required to make a recommendation on the proposal without regard to a negotiability determination. The undersigned Factfinder rejects the Unit's proposal and recommends no change in current contract.

Issue #9. Letter of agreement

The Unit proposes that a Letter Of Agreement be provided by the City to clarify in written form an office policy regarding the number of office employees who may be off work at any one time. The Unit claims there is uncertainty as to how many office personnel can be off work at the same time. It requests that the office policy as to time off be part of a written Letter of Agreement. It argues that employees are entitled to some degree of certainty as to the nature of the policy, even though it concedes the policy maybe changed by management if it desires to do so.

The City objects to the Unit proposal as a non-mandatory subject of negotiations. Further, it contends that the nature and scope of such a policy is a matter reserved to management.

Pursuant to PERB rule 6.3(2) the Factfinder is required to make a recommendation on the proposal without regard to a negotiability determination. The undersigned Factfinder rejects the Unit's proposal and recommends that no policy letter of agreement be provided to the Unit.


RECOMMENDATION SUMMARY

1. Wages—It is recommended that wages for each position in the bargaining unit be increased by 3/75% without adjustment to the percentage spread in the pay matrix.
2. Pay matrix adjustment—It is recommended that 3rd class and 2nd class steps be deleted from the pay matrix and the following language added at the end of paragraph A of Article VIII of the collective bargaining agreement: "Effective July 1, 2008, newly hired sworn officers or existing sworn officers then paid at the 3rd class or 2nd class wage rate on the pay matrix shall be compensated at the wage rate established for combined step 1 and 2, 1st class employees in the pay matrix."
3. Premium pay increase—It is recommended that the current contract remain in effect with respect to premium pay for 2008-09.
4. Clothing allowance—It is recommended that the current contract remain in effect with respect to clothing allowance for 2008-09.
5. Sick leave—It is recommended that employees be allowed to use up to three days of sick leave for serious personal illness or injury of an immediate family member who is a dependent of the employer, living in the employee's household, when the presence of the employee is necessary for the physical well being of the family member.
6. Physical examinations—It is recommended that current contract remain in effect with respect to physical examinations for 2008-09.
7. Education expense—It is recommended that the following language be added to Article XXXIF of the collective bargaining agreement: "Effective July 1, 2008, graduate level courses will not be reimbursed, except, existing employees who are already enrolled in a graduate degree program shall have until June 30, 2010 to complete those degrees with course reimbursement for the same as is allowed by this Article," and that Article XXXIV, as herein modified by in effect for 2008-09.

8. Life insurance for retirees—It is recommended that the current contract remain in effect with respect to life insurance for 2008-09.

9. Letter of agreement—It is recommended that no policy Letter of Agreement be provided to the Unit.

Dated this 13th day of March, 2008.



Terry D. Loeschen, Factfinder

CERTIFICATE OF SERVICE

I certify that on the 13th day of March, 2008, I served the foregoing Report of Fact Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mr. William J. Sueppel
122 South Linn Street
Iowa City, Iowa 52240-1802
Attorney for City of Clinton, Iowa

Mr. G. Wylie Pillars III
Pillars Law Office
1127 N. Second Street
Clinton, Iowa 52732
Attorney for Clinton Police
Dept., Bargaining Unit

I further certify that on the 13th day of March, 2008, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.


Terry D. Loesch, Fact-Finder

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